The Honorable Patrick Oishi
Noted for Hearing: June 21, 2019, 10:00 a.m.
With Oral Argument
Moving Papers

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

1426 FIRST AVENUE LLC, Plaintiff, v. CITY OF SEATTLE, Defendant.	No. 18-2-21872-1 SEA

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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I. INTRODUCTION & RELIEF REQUESTED

The City of Seattle enacted an ordinance on August 13, 2018, not to abate a safety crisis but because it wanted a private music venue – the Showbox on First Avenue – to be controlled by the City. Ordinance 125650 ("Ordinance") attached hereto. To accomplish that goal, the City grabbed the parcel where the Showbox sits – and only that parcel – out of its own prior lawful zoning, which allowed for high-rise development, and subjected it instead to drastically more onerous Pike Place Market Historical District controls. The move prevented vesting under existing zoning and prevented an application for a permit to be processed by Seattle's Department of Construction and Inspections ("SDCI"). The Ordinance was not a change that came about through slow, thoughtful "Seattle Process" – no. The well-planned, long term zoning for the property was undone in just two weeks with no meaningful public hearing.

The undisputable material facts show that in 2006 the property was zoned to 400' in allowable height. In 2017, the year just prior to the Ordinance, the property and surrounding ones were upzoned by the City to allow for 440' in support of increased affordable housing funding. That upzone process went through three years of analysis and public input. In contrast, the only thing that led to the 2018 ordinance was two weeks of poster waiving rallies led by Seattle Councilmember Sawant to "kill" a proposed redevelopment sale.

The City's grab of control of the property was unlawful. This Court should void the Ordinance on grounds of spot zoning, substantive due process violation, equal protection violation, and for procedural due process violations. Spot zoning – applying a different set of rules to one property compared to existing comprehensive zoning – has been universally condemned both by Washington courts and other jurisdictions. Spot zones are illegal and void. Further, the Ordinance imposes too heavily on the owner's ability to exercise and enjoy fundamental ownership rights in leasing, using and redeveloping the property. For this reason, it is void under Washington and federal substantive due process law. The Ordinance

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also violates the federal and state equal protection guarantees. Finally, the usual process that protects against illegal arbitrary and capricious actions were ignored in the City's rush, and the enactment violated federal and state procedural due process protections.

This motion seeks determinations on liability on these claims. Other claims and amount of damages are reserved for trial, if needed. *See* Statement of Issues, *infra*.

II. STATEMENT OF FACTS

A. The Property and Building.

1426 First Avenue LLC owns a parcel of property on the east side of First Avenue in Seattle. Decl. of Roger Forbes in Supp. of Mot. for Partial Summ. J. ("R. Forbes Decl.") ¶ 2. Its address is 1412-1426 First Avenue. Plaintiff leases subsections of the aged building on the property to business operators of a performance hall (Showbox), the Blarney Stone Pub, a pawn/jewelry shop and a Chinese-food restaurant. *Id.* ¶ 8. The property was purchased for investment purposes as a redevelopment site because the current low slung-two story building is of old unreinforced masonry rated by the City at high risk of collapse. *Id.* ¶ 3 & Ex. A. It has been modified and remodeled many times since first constructed in (circa) 1916. *Id.* ¶ 3. In 2006 the City of Seattle conducted a professional historical survey of the property and determined it was not worthy of Landmark nomination and then in 2007 wrote a detailed letter to the owner that redevelopment of the site would *not* need to go through the Landmark process. Decl. of John Tondini in Supp. of Pl.'s Mot. for Partial Summ. J. ("Tondini Decl.") Ex. 1 at 3, Ex. 2 at 6; R. Forbes Decl. ¶ 4 & Ex. B. That survey was conducted by a former Pike Place Historical District Coordinator (Kate Krafft)[1] and the letter was signed by the City's Chief Historic Preservation Officer. R. Forbes Decl., Ex. B. Not only was it not Landmark-worthy, it was not even considered in the same class as "historic" theaters in Seattle. In 2011, Seattle created a "Historic Theater District," designating five performance

[1] *See* Ex. 3 (S. Sodt Dep.) at 13-14, 62 & Ex. 4. The coordinator is a City employee in charge of organizing the activity of the Commission and attending each Commission meeting. *Id.*, Ex. 3 (Sodt Dep.) at 15.

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venues for special treatment under this classification. Tondini Decl., Ex. 5 (Resolution 31341). The Showbox was not worthy of designation. *Id.*

B. Prior Zoning.

When the area-wide zoning throughout downtown was modified in 2006, the site was upzoned to 400 feet. Decl. of Richard Settle in Supp. of Pl.'s Mot. for Partial Summ. J. ("Settle Decl.") ¶ 6; Tondini Decl., Ex. 6 (Staley Dep.) at 43-44, 52. In 2017, the site was upzoned again to 440 feet for residential use. Settle Decl. ¶ 5; Seattle Ordinance 125291; Tondini Decl., Ex. 6 (Staley Dep.) at 36, 43-45, 52. That upzone was part of the Mandatory Housing Affordability ("MHA") ordinance, which incentivized taller development so that the City could collect affordable housing dollars for housing programs. Seattle Ordinance 125291; Tondini Decl., Ex. 6 (Staley Dep.) at 45, 50-53 & Ex. 7. Public hearings and the process for that upzone took place from 2014 to 2017. Tondini Decl. Ex. 6 (Staley Dep.) at 22 (2014 start), 44 (2017), 54-60 (process) & Ex. 8 at COS010926. None of the properties across First Avenue from the Market was exempt from the upzone. *Id.*, Ex. 9.

During that MHA debate the specific parcel at issue here (the Showbox site) was identified on City Planning Department maps and PowerPoints used with the City Council and others and judged as "likely to be redevelopable" to 44 stories tall. *Id.*, Ex. 6 (Staley Dep.) at 60-63, 69-70, 72-77, 98-100, Exs. 10-14 & Ex. 15 ("likely to be redevelopable"). The City also projected that the redevelopment would create a payment of approximately $5 million for affordable housing. *Id.*, Ex. 6 (Staley Dep.) at 91-92, Ex. 8 at COS010935.

Thus, the high likelihood of redevelopment for the property was anticipated, well-known and the product of the City's own incentives. And no one in City government or at the Pike Place Historical Commission said anything at the time about expanding the Pike Place Market Historical District. *Id.*, Ex. 3 (Sodt Dep.) at 67, 99.

Consistent with the 440' comprehensive zoning plan for the site, other buildings have been redeveloped and built into high-rises nearby. Within a few block radius, there are eight

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buildings at or over 24 stories tall, including the 25-story Newmark Building immediately adjacent to it and a 440' building called West Edge on the next block east. R. Settle Decl. ¶ 7. The Hahn Building, on the corner of First and Pike is slated for demolition and redevelopment into a 14-story hotel right at the entrance to the Market. Tondini Decl., Ex. 44; R. Forbes Decl. ¶ 9. The Hahn Building was not Landmarked nor put into the Historical District. Tondini Decl., Ex. 16 (McAuliffe Dep.) at 81-83 & Ex. 45. Yet, when news reached City Hall on July 25, 2018 that plaintiff had contracted to sell its property for $41 million to Onni (a building developer) so that Onni could build that precisely-predicted 44-story residential building (*id.*, Ex. 17), the City Council rushed to create a political, arbitrary barrier to this redevelopment. *Id.*, Ex. 18 (Sawant press release), Ex. 19 ("Demands" and "Pain Point" memo).

C. <u>The Plan to Kill Redevelopment</u>.

In just the space of time between August 3 and August 13, the City set about to pass an ordinance for the blatant and express purpose to "kill" the Onni deal.[2] As a City document bluntly puts it: "This is CM Sawant's proposal to adjust the boundaries … specifically for the purposes of 'killing' the Omni [sic] Development potential development." *Id.*, Ex. 22 at 2.

The Historical District Commission had never asked for an expansion to cover the Showbox. A proposal in 1993 to cover certain east of First Avenue properties *did not* include the Showbox. *Id.*, Ex. 4. But, even that 1993 expansion did not happen. In 2018, the Pike Place Market PDA did not think expansion was a good idea and told the City Council just that. *Id.*, Ex. 23 (PDA letter). The State office of Historic Preservation in Olympia also told the City that the proposed Ordinance was procedurally improper and subject to attack as arbitrary and capricious. *Id.*, Ex. 24 (State letter). The City's own Chief Historic Preservation Officer was out on vacation the two weeks prior to the vote. *Id.*, Ex. 3 (Sodt

[2] A broader expansion ordinance was first introduced on August 6. Tondini Decl., Exs. 20-21 ("[T]his is specifically to ensure that Onni can't vest and do any development of the Showbox site.").

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Dep.) at 20. And the District Commission did not ask for expansion and took no position on the expansion. *Id.*, Ex. 3 (Sodt Dep.) at 67, 99, Ex. 25 (8/8/18 Tr.) at 35, Ex. 16 (McAuliffe Dep.) at 84-85.

The plan to kill the development was accomplished by down zoning just the one property from an allowed 440-foot building to being essentially frozen in time by including it in the Historic District where the Commission takes over effective ownership control of use and any redevelopment. *Id.*, Ex. 26 at COS0114888 ("Historic District designation is one of the few tools the City has to govern *use* of a site." (emphasis in original)). *See also id.* Ex. 46 at 2 & Ex. 3 (Sodt Dep.) at 68-70 (Landmarking does not control use). The Council realizing that Landmarking was unlikely to happen on the merits (given the reality of the lack of historic integrity recognized in the 2006 survey and 2007 letter), and realizing that Landmarking would not prevent redevelopment and preserve *the use* of the building as a concert venue, decided to take just this one single lot on the east side of First Avenue and haul it into the Historical District where it would be controlled by the City's own Commission. *Id.* (Sodt. Dep.) at 43-49. The plan to take control over the Showbox was made plain:

> CHAIR BAGSHAW: So my understanding -- Erin, you may want to dive in here and help us with this -- that in the landmark provisions as we have them now, **that the use cannot be controlled by the landmark designation. That we may be able to have exterior and interior, but landmarking does not guarantee the continued use of music in that venue.**
>
> ERIN: That's correct. So the Landmarks Board has purview over making alterations to the physical features of a landmark but do not have purview over a tenant or a type of use.
>
> CHAIR BAGSHAW: **Right. And in contrast to that, we have our Pike Place Market Historical Commission where the controls of use could apply. Which is one of the reasons that Councilmember Sawant has been pushing so hard to get this within the district, because the commission oversees use.**

Id., Ex. 25 at 78 (emphases added).

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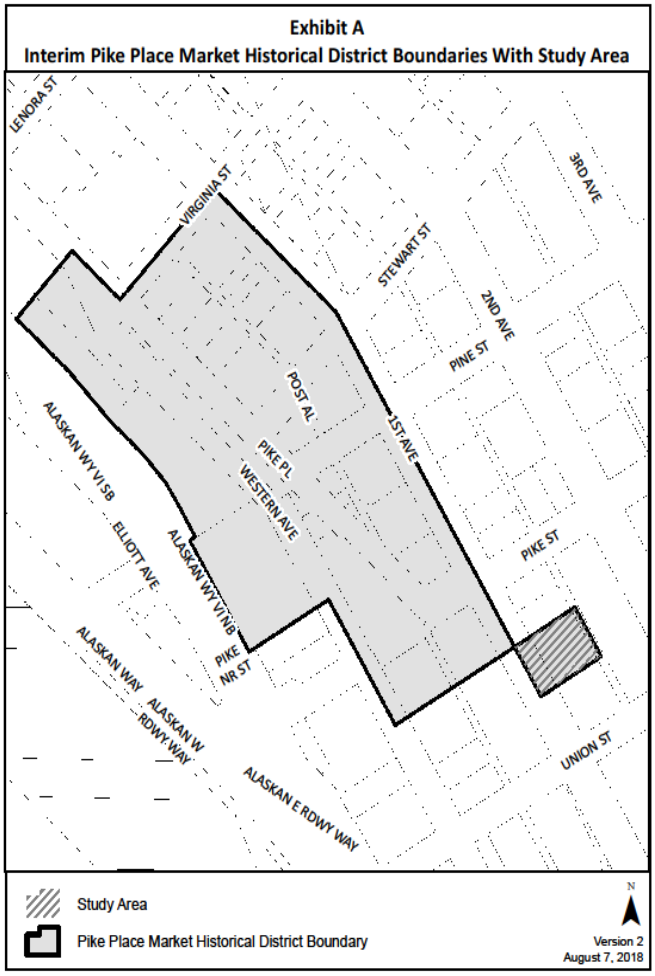
A map was included with the final Ordinance that showed by a hatch-marked box the sole property subject to the Council's action:



In creating the spot zone for just the one property on the east side of First Avenue, various City Councilmembers flatly rejected the developer's idea of potentially building a new performance space within the new development. *See id.*, Ex. 27 at PRR_000767. The developer's idea was derided as a "hollow effort." *Id.*, Ex. 28 at 33. Councilmember Herbold echoed comments that called for a "drag out fight" against the redevelopment. *Id.*, Ex. 29 (Facebook 7/25/18). Councilmember Bagshaw said that the City would do everything in its power to prevent the development with whatever tools were available, and "the ones we

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haven't figured out yet." *Id.*, Ex. 25 at 90. The tool used was an illegal spot zone and other invasions of constitutional rights.

At least one councilmember was acutely aware of the legal risks. *Id.*, Ex. 30 at PRR_000669-70 (Councilmember Mosqueda text file). "If y'all vote today, the owner's property value effectively plummets as a result of the effective downzone, opening the door to a suit for that multimillion dollars loss in value." *Id.* at PRR_000670. *See also id.*, Ex. 31 at PRR_000692, Ex. 47 (Maddux Dep.) at 34-39. A draft of the Mayor's signing statement on the Ordinance also stated that the "Council's premature action … may expose the City to unnecessary legal risk." *Id.*, Ex. 32 at COS0114922.

But the Council acted and its ploy worked. Onni canceled the original $41 million-dollar contract after the Ordinance passed and went into effect. R. Forbes Decl., Ex. C (Contract cancellation letter).

D. <u>The City Took Control of Any Change in Use</u>.

The District Commission (under the Seattle Department of Neighborhoods) rules as overlord over all aspects of buildings in the District. SMC 25.24.030-060; Tondini Decl., Ex. 3 (Sodt Dep.) at 43-49. Any redevelopment, change in use, tenant, business ownership or any other kind of change in regard to the property – *down to even interior paint color* – is controlled by the Commission and its Guidelines for District properties. Tondini Decl., Ex. 16 (McAuliffe Dep.) at 29-33, Ex. 46 at 2, Ex. 33 attaching "Guidelines." And, the Ordinance closed the permit application process at SDCI. *Id.*, Ex. 16 (McAuliffe Dep.) at 29-32, Ex. 3 (Sodt Dep.) at 45-46, SMC 25.24.060(B)(1). As the Guidelines plainly state: "The Pike Place Market Historical Commission is responsible for preservation and protection of historic uses…." *Id*. § 1.1. "Changes in use" including "changes in ownership" require Commission approval. *Id.* § 1.3. "Compliance with use and design terms … is required." *Id*. § 1.7. *See also id.* Ex. 16 (McAuliffe Dep.) at 41-72, 107-08, 115-16. Historic buildings are to be restored (Guidelines §§ 3.2.13, 3.9) and anything new is either prohibited (*id.* § 3.2.6) or must

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be to "scale and form to surrounding structures." *Id.* §§ 3.2.2, 4.2. Any lease by the owner must now be reviewed and approved by the Commission. *Id.* § 2.10.2, Tondini Decl. Ex. 3 (Sodt Dep.) at 47-49.

Presently the Showbox concert venue is run under a lease to a subsidiary of the AEG Group, a worldwide sports and entertainment conglomerate. R. Forbes Decl. ¶ 8; Tondini Decl. Ex. 34.[3] Because of the Ordinance, the Commission now controls any change in tenant, change in business, and change in interior paint color for the property to name just a few of the controls. The Commission even controls displays (Tondini Decl., Ex. 33 § 3.4.3) and product choices and prices. *Id.*, Ex. 16 (McAuliffe Dep.) at 65, 70-72, 128-29. Thus, the Ordinance strips away the owner's control over who can be a tenant, the types of businesses the owner wants to operate at the property, how the business is run, as well as how the property is maintained, heated and cooled, let alone how it is to be used or redeveloped. As the City's own documents say, the Ordinance had its effect to "kill" the redevelopment of the property to its highest zoned use to 440'. *Id.*, Exs. 20, 21 & 22 at 2.

E. <u>The Process for Historical District Controls Was Ignored</u>.

These strict Historical District controls began in the mid-1970s when the District was formed under powers of eminent domain. R. Settle Decl. ¶ 10. The City acquired almost all of the Market properties by eminent domain. *Id.* ¶ 11. The City was free to impose whatever restrictions it wanted to impose on itself regarding properties that it had acquired and passed along to the Market PDA. *Id.* In contrast, here the City did not offer to buy the property. *Id.* ¶ 12; R. Forbes Decl. ¶ 7. Instead, the City yanked the property's control from the owner and placed that control into its own hands – the Mayor-selected Commission, each of whom must have "a demonstrated sympathy" for "preservation" and "continuance of uses." SMC 25.24.030.

[3] The Showbox already runs afoul of the Guidelines because AEG is not an "owner operator" at the Showbox. *Id.*, Ex. 33 § 2.6.1. Moreover, because AEG did not begin its entertainment operations at the market, it cannot operate there because it has locations elsewhere. *Id.*

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Long-established law protects private landowners from such over-reach by the government. Plaintiff now seeks summary judgment as to some of its claims, which if granted will void the Ordinance. Certain other, more claim-specific, facts are identified in the legal analysis below.

III. STATEMENT OF ISSUES

A. Issues.

Pursuant to CR 56(a) questions of law and liability based on undisputed material facts can be determined in advance of trial. These issues include:

1. Was the Ordinance an illegal spot zone?
2. Does the Ordinance violate Plaintiff's substantive due process rights?
3. Does the Ordinance violate the Equal Protection Clause?
4. Did the Ordinance's passage violate Plaintiff's procedural due process rights?

B. Procedural Setting.

On October 19, 2018, Judge Roberts ruled on the City's Motion for Partial Summary Judgment. Dkt. 13. The City did not move on all claims, instead moving on three. *Id.* The Court granted dismissal of the Takings claim, but denied the motion as to the Appearance of Fairness claim and Compelled Speech/First Amendment claim, finding as to both that that there "are material issues of disputed fact." Dkt. 39, Order at 2. The claims at issue in this motion are the claims not addressed in the City's earlier motion and the order.[4]

IV. EVIDENCE RELIED UPON

Prior pleadings herein; Tondini Declaration; Roger Forbes Declaration; Eric Forbes Declaration and Richard Settle Declaration and all exhibits to each filed herewith.

[4] The Appearance of Fairness claim and related due process claim of bias of the Council, and Compelled Speech/First Amendment claim already are reserved for trial. Also reserved for trial are issues related to Section 1983 damages.

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V. ARGUMENT

A. The Ordinance Is an Illegal Spot Zone.

In 2006 and in 2017, the parcel of property where the Showbox sits was zoned and then upzoned again to a residential use height of 440'. Tondini Decl., Ex. 6 (Staley Dep.) at 43-45. No zoning conditions in the area changed since the 2017 upzone. *Id.* at 33-34. In 2018, the City still needed affordable housing and still encouraged dense high-rise growth. *Id.* In fact, even after passage of the Ordinance at issue, the City continued to implement the MHA upzone throughout the City with the neighborhood upzone Ordinance being passed in March 2019. Seattle Ordinance 125791 (2019 MHA neighborhood upzone). Additionally, the preexisting zoning for all of the east side of First Avenue near the Pike Place Market shows a logical plan: the properties on First Avenue directly across from the Historical District have lower height limits than those adjacent, but not directly across the street from the Historical District. R. Settle Decl. ¶ 6; Tondini Decl., Ex. 6 (Staley Dep.) at 36-42, Ex. 35 (map). This systematic and longstanding difference was the product of thoughtful zoning and it contrasts with the rushed rezone based solely on popular opinion. Tondini Decl., Ex. 6 (Staley Dep.) at 40-42.

Despite no change in neighborhood conditions, the City in the span of two weeks spot zoned just one piece of property to prevent vesting and submission of a permit application to SDCI by putting the Historical District controls onto the property. *Id.*, Ex. 16 (McAuliffe Dep.) at 29-32.

In *Pierce v. King County*, 62 Wn.2d 324, 338, 382 P.2d 628 (1963), the State Supreme Court stated that spot zoning is "an evil in the field of municipal growth." "It has generally been held that spot zoning is improper, and that one or two building lots may not be marked off into a separate district or zone and benefitted by peculiar advantages *or subjected to*

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peculiar burdens not applicable to adjoining similar lands." *Id.* When a City engages in spot zoning, the ordinance is deemed void. *Id.*

This was the result in *Woodcrest Investments Corp. v. Skagit County*, 39 Wn. App. 622, 694 P.2d 705 (1985). Woodcrest owned land in Skagit County that was zoned for residential development. Community residents filed a petition asking that some of that land be down-zoned to rural to block development. The County approved the down-zone. Woodcrest challenged the down-zone as an illegal spot-zone. The Superior Court and Court of Appeals agreed: "The trial court concluded that the rezone constituted a 'site specific rezone' and the record 'fail[ed] to disclose that conditions had substantially changed since the most recent zoning enactment.'" *Id*. at 628. The down-zone was declared null and void. *Id.* at 628, 630. That case precisely fits the circumstances here, where just one year prior the precise property and other likes it were upzoned pursuant to a comprehensive plan of zoning. Indeed, on maps prepared by the City, the precise property was designed as likely to be redeveloped to 44 stories. Tondini Decl., Ex. 6 (Staley Dep.) at 60-63, 69-70, 72-77, 98-100 & Exs. 10-15.

Public opinion is not a legitimate basis for a spot zone. In *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995), the Court rejected popular opposition as a basis for denying a permit. "In fact, the City's denial appears to rest upon neighborhood opposition.… While the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision." *Id*. at 797. Washington law is consistent with other states.

In *Ross v. City of Yorba Linda*, 1 Cal. App. 4th 954, 2 Cal. Rptr. 2d 638 (1991), the City argued its spot zone was supported public opinion. That rationale was rejected.

> If public opinion by itself could justify the denial of constitutional rights, then those rights would be meaningless. The most arbitrary treatment of an individual or irrational legislative classification would pass constitutional muster under the "rational basis" test if all that need be shown is support by some segment of the public.

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Id. at 964.

In *City of Miami Beach v. Robbins*, 702 So. 2d 1329 (Fla. Dist. Ct. App. 1997), the City passed an ordinance which rezoned Robbins's land, as well as the two blocks adjacent to his property. The court held that this rezoning constituted a reverse spot-zone. "Reverse spot zoning occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating, in effect, a veritable zoning island or zoning peninsula in a surrounding sea of contrary zoning classification. Reverse spot zoning is invalid, as it is confiscatory." *Id.* at 1330.

Local governments cannot dictate specific uses of a property. *See Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 31 So. 3d 260 (Fla. Dist. Ct. App. 2010) (voiding ordinance as spot zone):

> The Village's actions were legally impermissible…. A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights. *Porpoise Point P'ship v. St. Johns County*, 470 So. 2d 850, 851 (Fla. 5th DCA 1985). *See also Debes*, 690 So. 2d at 702.

Id. at 263.

Like the situation here, the New Jersey case of *PC Air Rights, LLC v. Mayor & City Council of the City of Hackensack*, No. L-5350-05, 2006 WL 2035669 (N.J. Super. Ct. July 20, 2006), addressed a rezone that thwarted a high-rise apartment building even though other such structures already were in the same area. "The area that surrounds the property in question contains a mixture of residential uses of varying degrees of density. The focal feature, however, of the neighborhood is the Prospect Avenue corridor of high-rise apartment buildings that stretch north and south on both sides of the property in question." 2006 WL 2035669, at *2. The City in response to redevelopment opposition enacted a new zoning

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ordinance that down-zoned the property. The court held that this was an illegal reverse spot-zone. *Id.*, at *6.

Each and all of these relevant authorities compels the legal conclusion that the Ordinance is an invalid spot zone. Based on Washington law, and similar rulings across jurisdictions, the City's action here is indisputably an illegal spot zone. The illegal treatment applied to just this one property should be voided immediately.

B. The Ordinance Violates Substantive Due Process.

Washington Courts follow the analysis laid out in *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 787 P.2d 907 (1990) and *Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993) to evaluate Washington and Federal constitutional substantive due process claims. The U.S. Supreme Court has long held that restraints on fundamental property rights are subject to heightened scrutiny under due process clause's protection of substantive rights. *See, e.g., Vill. of Euclid v. Ambler Realty Co*., 272 U.S. 365, 395, 47 S. Ct. 114, 71 L. Ed. 303 (1926) (A restriction on owner's rights in property must substantially advance a legitimate public purpose.).

Government "may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities." *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121, 49 S. Ct. 50, 73 L. Ed. 210 (1928) (voiding a Seattle ordinance that was used to block a private redevelopment of property). *See also Manufactured Hous. Cmtys. of Wash. v. State*, 142 Wn.2d 347, 363-65, 13 P.3d 183 (2000).

Because Washington's due process clause is coextensive in language with the Fourteenth Amendment, Washington courts have cited to various Supreme Court cases and its own precedents to hold that a restriction on property must (1) address a public problem, (2) tend to solve the problem, and (3) not be unduly oppressive upon the person regulated. *See,*

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e.g., Presbytery, 114 Wn.2d at 330-31. If the regulation fails any of the three questions, it violates substantive due process and is void.

1. <u>The Ordinance Fails Each Test</u>.

As to whether the Ordinance addresses a public harm and thus has a legitimate public purpose, the answer is "no." Redevelopment to 440 feet is precisely the public good that the comprehensive downtown-wide MHA upzone was aiming for. Tondini Decl., Ex. 6 (Staley Dep.) at 106-108, and Ex. 8 at COS010931. The property's use as urban residences is allowed and favored by City policy. Ex. 6 (Staley Dep.) at 33-34, 106-08. Indeed, the City predicted that lawful redevelopment of the site was "likely." *Id.*, Ex. 6 (Staley Dep.) at 60-63, 69-70, 72-77 & Ex. 15. Instead the aim of the Ordinance was to "kill" a private contract for sale – hardly a legitimate governmental function. *Id.,* Exs. 20-22. Acting for the benefit of a vocal lobby is not a legitimate use of police power when the property owner is not harming the environment or neighboring properties. *Sunderland*, 127 Wn.2d at 797. "While the City can regulate the use of property so as not to injure others, a law that undertakes to abolish or limit the exercise of rights beyond what is necessary to provide for the public welfare cannot be included in the lawful police power of the government." *Yim v. City of Seattle*, King Cnty. Super. Ct. Case No. 17-2-05595-6 SEA Order re Mots. for Summ. J. ("*Yim* SJM Order") at 6 (March 28, 2018) (*citing Ralph v. City of Wenatchee*, 34 Wn.2d 638, 644, 209 P.2d 270 (1949)).

As to inquiry two: the means do not achieve any purpose other than "killing" the Onni redevelopment contract. The purpose stated in the Ordinance is to preserve historical and cultural value. Ordinance § 1 ¶ F. However, the purpose of preserving eligible historical landmark buildings is already covered by Seattle's Landmark Ordinance, which this Ordinance attempts to trump. SMC 25.12.020 (Landmark Ordinance). Instead of following the procedure for landmarking (SMC 25.12.380-580), the Council ignored that process and the Landmark criteria to instead subject this one property to special burdens outside of the

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scope of the Landmark laws – assuredly because its own neutral and unbiased analysis in 2006 and 2007 was that the property was not even close to being landmarkable. R. Forbes Decl., Ex. B. If the Ordinance is aimed at preserving old buildings which are not landmark worthy, but which are near the Market, then the Ordinance still fails because it grabs only *one* property and *not* any of the others up and down First Avenue across the from the Market. The Ordinance's own Council briefing papers listed multiple properties that were of the same vintage, but none of the others were given the same burden under the Ordinance as this one property. Tondini Decl., Ex. 36. A 1993 unadopted proposal for expansion included some First Avenue properties, but not the Showbox, and thus the Ordinance was not achieving even what the Commission had once proposed as "justifiable." *Id.,* Ex. 4.

If the purpose of the Ordinance is to preserve music venues, it likewise fails. Venues nearby like the Triple Door, the Moore, the Crocodile, to name just three similar venues within mere blocks, are not included. Decl. of Eric Forbes in Supp. of Mot. for Partial Summ. J. ("E. Forbes Decl.") ¶ 4. Nor is Tula's or the El Corazon included, which are concert venues slated for redevelopment. *Id.*, Exs. A-B. A rationally designed ordinance would have included these similar types of venues. Thus, the means chosen do not reasonably advance any legitimate goal of the Ordinance. In other words, the Ordinance is arbitrary and capricious and is not rationally related to any legitimate purpose.

Regarding the third test, the Supreme Court in *Presbytery* listed a series of non-exclusive factors to consider regarding "unduly oppressive":

- On the public's side, the court considers:
    - The seriousness of the public problem
    - The extent to which the owner's land contributes to it
    - The degree to which the proposed regulation solves it
    - The feasibility of less oppressive solutions
- On the landowner's side, the court considers:

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- The amount and percentage of loss in land value
- The extent of remaining uses
- Past, present and future uses
- Temporary or permanent nature of the regulation
- The extent to which the owner should have been able to anticipate the regulation
- How feasible it is for the owner to alter present or currently planned uses

Minor factual disputes will not defeat summary judgment as to this part of the test, which need not be reached. "A substantive due process claim need not show that *no* viable use of the property remains, but rather that any interference with property rights was irrational or arbitrary." *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 21, 829 P.2d 765 (1992) (citation omitted). That is demonstrably the case here.

Again, even if it is argued that the "public side" of the Ordinance is preservation of concert space in Seattle, then the Ordinance fails to rationally do that because it puts all the burden of that goal *on one property* and does not subject any other concert space property to the burden of preserving entertainment space, i.e., the aforementioned historic El Corazon, Triple Door, Moore, and Crocodile. Similarly, the goal of promoting concert space could have been achieved by requiring replacement concert space within a new high-rise development, but that common sense and rational solution was rejected by the City. Tondini Decl., Ex. 28 at 33. Instead, the goal was simply and only to "kill" a lawful redevelopment. *Id.*, Exs. 20-22.

On the landowner's side the burden is huge. Creating a public bandstand by ordaining that one and only one property owner must bear the burden of that by foregoing lawful high-rise redevelopment value is not a legitimate police power goal. The Ordinance already exacted a huge price on single property owner – the owner lost a $41 million cash contract to sell the property to a redeveloper. R. Forbes Decl. ¶¶ 5, 11. The effect, even without that lost

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contract is significant in that the landowner lost almost all attributes of property ownership. For example, the Ordinance has the effect of prohibiting any change in use. Functionally, the Commission is now the entity that makes decisions about traditional ownership questions: How do I use my property; who do I want to lease to; what businesses do I want to operate; and even down to what color do I want to paint the walls?[5] The landowner is simply stuck with paying the taxes on the property and absorbing the loss of a $41 million contract to sell the property.

As to the factor of whether the regulation should have been anticipated, the City sent a letter to the owner giving a bright green light to redevelopment. R. Forbes Decl., Ex. B. And, the City itself mapped and anticipated that the property would be redeveloped to 44 stories. Tondini Decl., Ex. 15.

Thus, under any reasonable consideration of the unduly oppressive test, the Ordinance is unconstitutional beyond any reasonable doubt.[6]

2. Similar Cases Resulted in Invalidation.

Invalidity is confirmed by a review of prior cases. In *Sintra*, a Seattle ordinance required a landowner who developed property to pay a displacement fee to get permits. The Supreme Court found that the ordinance violated due process:

> The oppressive nature of the regulation is itself violative of due process.... In a strictly economic case, such as this one, certain of these factors are more relevant than others. In particular, Sintra's property cannot be singled out as contributing to the problem of homelessness in any pronounced way; the lack of low income housing was brought about by a great number of economic and social causes which cannot be attributed to an individual parcel of

[5] A leasehold, as Judge Parisien held in *Yim*, is simply one method of property disposition. A property owner enjoys the right to lease to whom he or she wishes as a fundamental attribute of property ownership. *Yim* SJM Order at 3. That same reasoning would apply to choice of business uses, so long as they are otherwise lawful under generally applicable laws.

[6] To the extent that the City attempts to argue against controlling Washington case law and seeks to argue a "rational basis" test, the Ordinance fails because it is arbitrary and capricious as demonstrated above and not rationally related to curing a legitimate police power nuisance.

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> property.… A regulation with such an unbalanced impact violates due process.

Sintra, 119 Wn.2d at 22 (citations omitted).[7]

In *Guimont v. Clarke*, 121 Wn.2d 586, 854 P.2d 1 (1993), the Supreme Court held that there was a substantive due process violation where a state law required payment to a mobile home relocation fund by those who sold mobile home parks. The Court did not engage in a ripeness analysis, instead ruling on the merits that the law was facially invalid. *Id.* at 608-13. Significantly, the Court was of the opinion that a landowner should have an unfettered right to sell property and get out of a line of business without being forced to either pay for that right to sell or have that right taken away by the government. *Id.* at 612. That is precisely what is at issue here.

As the Supreme Court recognized in *Guimont*, ripeness is not an issue where the impact of the regulation is readily foreseeable. For example, in *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 964-65, 954 P.2d 250 (1998), the Supreme Court stated that: "A cause of action for deprivation of property without due process is ripe immediately because the harm occurs at the time of the violation…."

Judge Parisien's recent ruling in *Yim v. City of Seattle*, King Cnty. No. 17-2-05595-6 SEA, Order re Mots. for Summ. J. (Mar. 28, 2018), likewise was made on a facial challenge and the court found that the Seattle ordinance at issue there violated substantive due process. *Id*. at 5-6. As the court said: "Due process embodies a promise that government will pursue legitimate purposes in a just and rational manner." *Id*. at 5. Under the undeniable material facts in the record, the Ordinance here violated the substantive due process rights of the landowner and is void.

[7] The Court also approved Section 1983 damages for this violation. "Arbitrary, irrational action on the part of regulators is sufficient to sustain a substantive due process claim under § 1983." *Id*. at 23.

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C. The Ordinance Violates Equal Protection Guarantees.

1. Strict Scrutiny Applies.

When an Ordinance infringes upon a fundamental right, the equal protection analysis requires "strict scrutiny."[8] Under that standard, it would be the City's burden to prove that the Ordinance was "necessary to accomplish a compelling state interest." *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987). The City could not meet this burden because precedent has established that neither aesthetics nor historic value are "compelling." *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 222-23, 840 P.2d 174 (1992).

"Fundamental" rights are those that are "objectively, 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty,' such that neither 'liberty nor justice would exist if they were sacrificed.'" *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 600, 192 P.3d 306 (2008) (quoting *State v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). The right to "acquire and hold property" are "fundamental rights which belong to the citizens of the state by reason of such citizenship." *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902).

Washington recognizes "fundamental attributes of property ownership," such as the right to exclude others, dispose of and/or transmit property. *See, e.g., Guimont*, 121 Wn.2d at 602. Property includes a collection of rights: "Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself." *Ackerman v. Port of Seattle*, 55 Wn.2d 400, 409, 348 P.2d 664 (1960) (quoting *Spann v. City of Dallas*, 111 Tex. 350, 355, 235 S.W. 513 (1921)), *abrogated on other grounds by Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wn.2d 6, 548 P.2d 1085 (1976). The Ordinance here invades and takes away from ownership control. By moving

[8] When the equal protection analysis does not involve a challenge to a special grant of privilege or immunity, the state and federal due process analysis is the same. *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776 n.4, 317 P.3d 1009 (2014).

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fundamental ownership control away from the owner and placing it with the Commission, the Ordinance destroys "part of 'the bundle of sticks' which the owner enjoys as a vested incident of ownership." *Manufactured Housing*, 142 Wn.2d at 367 (footnote omitted). Thus, the Ordinance is subject to and fails the test requiring a compelling state interest before such rights can be infringed. *See First Covenant*, 120 Wn.2d at 222-23.

2. The Ordinance Fails Even Under the Rational Basis Test.

Even when fundamental rights are not at stake, an ordinance must nonetheless pass a rational basis test. *See, e.g., Convention Ctr. Coal. v. City of Seattle*, 107 Wn.2d 370, 730 P.2d 636 (1986). However, even under a rational basis test the Ordinance here fails. That test involves the following three inquiries:

1. Whether the legislation applies alike to all members within the designated class;
2. Whether there are reasonable grounds to distinguish between those within and those without the class; and
3. Whether the classification has a rational relationship to the purpose of the legislation.

Id. While *comprehensive* zoning or land use ordinances are presumed constitutional, and the burden is on the party challenging the ordinance to prove its unconstitutionality under the equal protection clause, that assumption only applies to *comprehensive* zoning—not rezones or changes in treatment to *particular* parcels:

> "All zoning actions must bear a substantial relation to the public welfare. Comprehensive land use plans and promulgatory zoning regulations are presumed valid and are invalid only for manifest abuse of discretion.... *Rezoning actions, on the other hand, are not given that presumption and will be upheld only if there is substantial evidence indicating that the rezone furthers the public welfare and that changed circumstances warranted its passage.*"

Cathcart-Maltby-Clearview Cmty. Council v. Snohomish Cnty., 96 Wn.2d 201, 634 P.2d 853 (1981) (emphasis added) (citations omitted). Here, there was no change in circumstances for

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the property at issue. As described above, the Ordinance does not achieve a rational objective of preserving concert space because only *one* such space is included. Nearby concert halls were not treated alike. Nor does the Ordinance rationally preserve alleged historic properties (if that is the claimed rationale) because adjacent Landmarked properties were not included in the Ordinance. Tondini Decl., Ex. 36. And in 1993 a proposal for expansion included some First Avenue buildings, but not the Showbox. *Id.*, Ex. 4. There is no rational basis for putting this one property in the District and leaving other properties out. The Ordinance is the very definition of arbitrary and capricious and thus a violation of the equal protection clause.

3. The Owner Was Not Afforded the Protection Other Owners Were Offered When the Historical District Was Formed.

In addition, there is a second and independent variant for why the Ordinance at issue violates equal protection: When Plaintiff's property was placed under the strict District controls in 2018, it was not given the same protections as landowners similarly affected in the 1970s were given when the District was created. R. Settle Decl. ¶¶ 11-12. In the 1970s, property owners within the new District market were given a choice: voluntarily agree to be bound by the new restrictions and controls, or if you do not agree to voluntarily give up control, then you will get fair market value for your property by eminent domain proceedings. *Id.* ¶ 11. This was described and implement for properties within the project area in the 1970s, but the City refused any such procedure in its 2018 Ordinance. *Id.* ¶¶ 11-12.

Fair is fair. "The equal protection clause requires that persons similarly situated with respect to the legitimate purposes of the laws receive like treatment." *Matter of Knapp*, 102 Wn.2d 466, 473, 687 P.2d 1145 (1984). Here the City has refused to do precisely what it offered to do for other property owners when those properties were drawn into the District. The "agree or be bought out" mechanism was not applied equally to all properties similarly situated. There was no reasonable ground to treat the current property differently and thus the Ordinance is void.

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D. <u>The City Violated Procedural Due Process</u>.

"Procedural due process imposes limits on governmental decisions that deprive a person of 'liberty' or 'property' interests within the meaning of a constitution's due process clause." *Didlake v. State*, 186 Wn. App. 417, 425-26, 345 P.3d 43 (2015).[9] Procedural failings can be any failure to comply with statutory obligation and/or any failure to abide by fundamental due process. Both result in voiding an ordinance. A substantial failure to give proper notice is a legal ground to overturn a zoning decision. *Barrie v. Kitsap Cnty*., 84 Wn.2d 579, 527 P.2d 1377 (1974); 17 William B. Stoebuck, John W. Weaver, *Washington Practice, Real Estate* § 4.7 (2d ed.). "When a hearing is required on a zoning matter by statute, the failure to hold any such hearing is a fatal defect." 17 *Washington Practice, Real Estate* § 4.7. *See also Glaspey & Sons, Inc. v. Conrad*, 83 Wn.2d 707, 711-12, 521 P.2d 1173 (1974).

Here, the City gave no prior written notice to the owner of the property for either the August 8 Committee meeting (at which in any event only one minute per person was allowed for public comment), Tondini Decl., Ex. 25 at 6, or for the August 13 Council meeting (where again only one minute per person was allocated for public comment.) *Id.*, Ex. 28 at 3; R. Forbes Decl. ¶ 6.[10] The first written notice from the City regarding the Ordinance was sent to the property owner on August 22, 2018 ***after*** *passage of the Ordinance on August 13.* Tondini Decl., Ex. 38. That notice was sent in advance of a September 19 public hearing that City staffers themselves said was in effect just window dressing and served no real purpose. *Id.*, Ex. 39 ("Given that the Council already passed this legislation, the hearing likely won't be a big deal.") and the City had no trouble sending a letter to the owner *after the fact*. The

[9] Procedural due process requirements in this context is no different under the state or federal constitutions. *Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 714, 257 P.2d 570 (2011).
[10] On August 12, newly retained counsel for Plaintiff hurriedly sent a letter of protest to the Council urging time for more due process. Tondini Decl., Ex. 37.

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State's Department of Historic Preservation staffers described Seattle's public process as "inadequate." *See id.*, Ex. 40.

"Procedural due process requires notice which is reasonably calculated under the circumstances to apprise affected parties of the pending action and to afford them an opportunity to present their objections." *Pease Hill Cmty. Grp. v. Cnty. of Spokane*, 62 Wn. App. 800, 806, 816 P.2d 37 (1991); *Didlake*, 186 Wn. App. at 426. That did not happen.

In *Glaspey & Sons, Inc. v. Conrad*, 83 Wn.2d 707, 711-12, 521 P.2d 1173 (1974), the Supreme Court invalidated zoning amendments for failure of proper notice and failure of due process because the affected landowner was not given adequate notice and a fair opportunity to oppose. *Id.*

Even if there had been notice, the hearings were inadequate. One minute for public comment is flatly insufficient for a "fair" hearing. Tondini Decl., Ex. 25 at 6 & Ex. 28 at 3. Due process requires notice and a hearing "so they [opponents] can participate ***effectively***." *Responsible Urban Growth Grp. v. City of Kent*, 123 Wn.2d 376, 386, 868 P.2d 861 (1994) (notice was insufficient under both state and municipal zoning requirements and therefore failed to meet statutory and due process notice requirements) (emphasis added). The City ensured that no "effective" hearing occurred.

The City Council President bluntly admitted to not caring about input from the property owner. "I don't even know who owns it. I don't know who's developing it. I don't even care." *Id.*, Ex. 25 at 41.

Four cases demonstrate that the procedures here were inadequate under the law. First is the aforementioned *Responsible Urban Growth Group v. City of Kent* case where the facts are remarkably *s*imilar to the present case – a single parcel is rezoned to a different use than what was allowed under the comprehensive prior zoning. The Supreme Court in *Responsible Urban Growth* invalidated the ordinance for lack of procedural due process, just as this court should do here. In *Barrie*, 84 Wn.2d 579, the Washington Supreme Court also analyzed the

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sufficiency of the notice for a rezone, reiterating that "[t]he purpose of the notice required by [the] statute is to fairly and sufficiently apprise those who may be affected by the proposed action of the nature and character of the amendment so that they may intelligently prepare for the hearing." *Id.* at 584-85. The court invalidated the rezone because of failure of due process. In *Berst v. Snohomish County*, 114 Wn. App. 245, 255, 57 P.3d 273 (2002), the court held that a property owner's procedural due process rights were violated when the county imposed a building moratorium on their residential property without adequate hearings. *Id.* And, in *Prosser Hill Coalition v. County of Spokane*, 176 Wn. App. 280, 309 P.3d 1202 (2013), the court likewise held that a notice was inadequate. The court rejected an argument that notice was good enough even if it did not meet the letter of the law stating "it is difficult to measure the impact the faulty notice had on concerned individuals." *Id.*

Not only did Seattle here fail to afford basic constitutional procedural due process, the City failed to follow its own procedural process. A number of Seattle Municipal Code provisions, as well as documentation the City publishes, demonstrate that site-specific land use decisions by the City Council are quasi-judicial government action. First is the Seattle Municipal Code, which defines rezones as "quasi-judicial." SMC 23.76.004(C). A change in an "overlay" also is considered quasi-judicial. SMC 23.76.036(A)(1). The Historical District regulations are an "overlay" because the Guidelines require "use" permits for properties in the District, but not for those outside the District. Tondini Decl., Ex. 6 (Staley Dep.) at 21-22, 105-106, and Ex. 43 (additional layer of regulations is an "overlay"). As was stated in a similar case, "regardless of the labels applied to the Ordinance, its effect is to require a use permit for Jachimek's C-2 property but not for C-2 property in other parts of the City. We agree with the trial court that the Ordinance 'in fact and in law [creates] an overlay zone.'" *Jachimek v. Super. Ct.*, 169 Ariz. 317, 319, 819 P.2d 487 (1991) (voiding a special district requirement as an improper overlay).

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For either a single-property-specific decision or an overlay decision, the Seattle Municipal Code requires notice and hearings. Under the City's own Code, impacted property owners must be given formal written notice of land use rezones that affect their property by posting and mail. SMC 23.76.052(C); *see also* 23.76.012(A)(2), 23.76.042.[11] Notice and opportunity to be heard are also part of Seattle's local historical preservation law. SMC 25.12.380-580. None were followed, in letter or spirit.

The City failed to meet its procedural obligations under its own code and under the federal and Washington Constitutions. For this further reason, the Ordinance is void.

VI. CONCLUSION

As shown above, the Ordinance was flawed in substance and in the way it was adopted. Fundamental property and constitutional rights were knowingly ignored. Declaring the Ordinance void is required by well-established Washington law. Voiding the Ordinance will greatly assist in reducing the harm and injury inflicted upon the plaintiff.

DATED this 24th day of May, 2019.

BYRNES KELLER CROMWELL LLP

By /s/ John A. Tondini

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CERTIFICATION: The above signature also certifies that this memorandum contains 8,375 words, in compliance with the Local Civil Rules.

[11] A local decision to rezone specific tracts of land under a zoning code is considered an adjudicatory, quasi-judicial act. *Bassani v. Bd. of Cnty. Comm'rs for Yakima Cnty.*, 70 Wn. App. 389, 393, 853 P.2d 945 (1993).

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 24th day of May, 2019, a true copy of the foregoing was served on each and every attorney of record herein via King County E-Service:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED in Seattle, Washington, this 24th day of May, 2019.

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ATTACHMENT

CITY OF SEATTLE

ORDINANCE 125650

COUNCIL BILL 119330

AN ORDINANCE relating to the Pike Place Market Historical District; amending Chapter 25.24 of the Seattle Municipal Code to adopt an interim boundary expansion for the Pike Place Market Historical District.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following legislative findings of fact and declarations:

A. The Pike Place Market Historical District (District) was created in 1971 through a Citizens' Initiative.

B. The boundaries of the District have been amended twice since it was created: (1) in 1986 through Ordinance 113199 and (2) in 1989 through Ordinance 114863.

C. The City's Historic Resources Survey identifies multiple structures in the vicinity of the District that may be eligible as landmarks but are not currently designated as landmarks.

D. Recent development activity adjacent to the District has put potentially eligible landmarks at risk of demolition or alteration before the protections of the district may be applied, thus constituting an emergency pursuant to WAC 197-11-880.

E. The Showbox Theater is a significant cultural resource to Seattle and the region with a history connecting it to the adjacent Pike Place Market;

F. The loss of the Showbox Theater would erode the historical and cultural value of the Pike Place Market neighborhood;

G. Adopting a boundary expansion on an interim basis will allow the City to consider whether and to what extent to expand the boundaries of the District to include the Showbox Theater.

H. The Council finds that the Pike Place Market Historical District ordinance is a development regulation that is not subject to referenda and that the Council has the authority to provide for the immediate effectiveness of this amendment to that ordinance.

Section 2. Section 25.24.020 of the Seattle Municipal Code, last amended by Ordinance 114863, is amended as follows:

25.24.020 Historical District designated.

There is created a Pike Place Market Historical District (hereafter called "Historical District") whose physical boundaries are illustrated on a map attached as Exhibit "A" to Ordinance 100475 which is codified at the end of this chapter. <u>These boundaries include an interim expansion that encompasses a Study Area, which will be considered for a future permanent expansion.</u>

Section 3. Exhibit A of Ordinance 100475, last amended by Ordinance 114863, is amended and redrawn to expand the boundaries of the Pike Place Market Historical District to include an interim Study Area, as shown on Exhibit A to this ordinance.

Section 4. Under RCW 36.70A.390, the Council approves the following work plan for the development of regulations to address the issues in this ordinance and directs the Department of Neighborhoods to transmit proposed legislation to the Council by June 2019.

Review the historic significance of the Showbox theater, study the relationship between the Showbox theater and the Pike Place Market, consider amendments to the Pike Place Market Historical District Design Guidelines related to the	August 2018 - April 2019

Showbox theater, draft legislation, conduct outreach to stakeholders, and conduct State Environmental Policy Act (SEPA) Review on permanent expansion of the Historical District, as appropriate	
Publish SEPA threshold determination if necessary	March 2019
Mayor transmits legislation to Council	May 2019
Council deliberations on proposed expansion of the Historical District	June 2019
Permanent district expansion effective	July 2019

Section 5. Sunset provision. Sections 2 and 3 of this ordinance shall expire on the earlier of: (a) ten months from the effective date of this ordinance or (b) the date an ordinance establishing the boundaries of a permanent expansion becomes effective.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 13th day of August, 2018, and signed by me in open session in authentication of its passage this 13th day of August, 2018.

Bruce O Harrell

President _____ of the City Council

Approved by me this 24TH day of August, 2018.

Jenny A Durkan

Jenny A. Durkan, Mayor

Filed by me this 24th day of August, 2018.

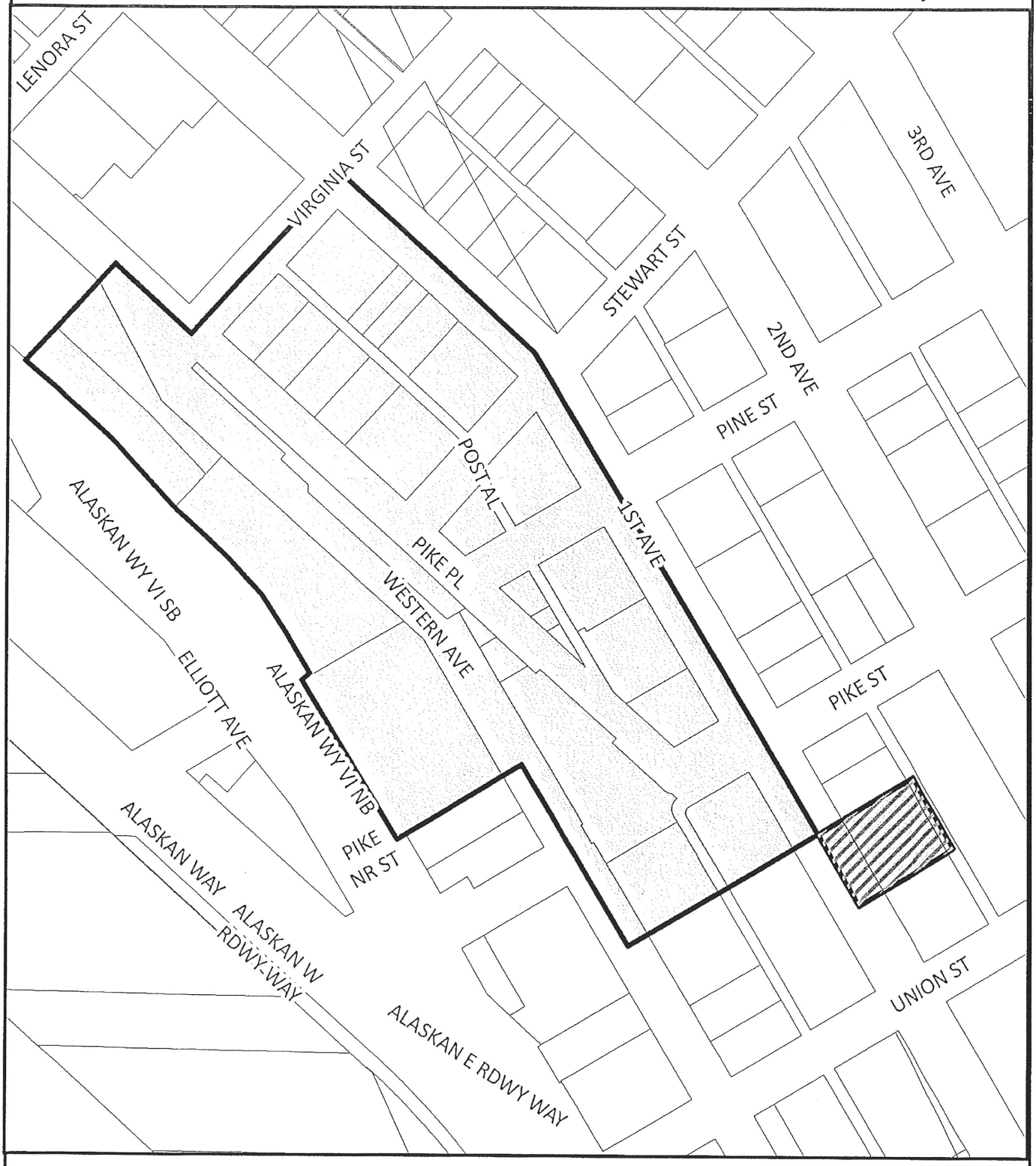
Monica M. Simmons

for Monica Martinez Simmons, City Clerk

(Seal)

Exhibits:
Exhibit A – Interim Pike Place Market Historical District Boundaries with Study Area

Exhibit A
Interim Pike Place Market Historical District Boundaries With Study Area



Study Area

Pike Place Market Historical District Boundary

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Version 2
August 7, 2018